RD AN No. 3749 (2024-A)
April 24, 2002

TO: State Directors
Rural Development

ATTENTION: MFH Program Directors, Coordinators
and Rural Development Managers

FROM: Arthur A. Garcia ***(Signed by Arthur A. Garcia)***
Administrator
Rural Housing Service

SUBJECT: Protective Advance – Recoverable or Non-recoverable Cost

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to address protective advances, when to implement protective advances, recoverable cost or non-recoverable cost, and provide guidance to all the field offices operating the Multi-Family Housing program. Protective advances are necessary to protect the government's interest and security in the property. Please note, a protective advance is **not** a source of loan funds for properties needing rehabilitation or repair.

Servicing offices must obtain a revised copy of RD Instruction 2024-A, Exhibit D, Table D-6, "Program Authority to Request Contract Services and Make Non Contractual Payments - Recoverability of Program Loan Cost Expenses - Multi-Family Housing Programs." Also, an electronic copy of RD Instruction 2024-A can be downloaded from the Rural Development Internet Site at http://rdinit.usda.gov/regs/.

COMPARISON WITH PREVIOUS AN:

This AN reissues the guidance provided in AN No 3498(2024-A) dated December 7, 1999.

IMPLEMENTATION RESPONSIBILITIES:

Servicing offices should remember that it is the borrower's responsibility to (1) make loan payments as agreed, (2) pay real estate taxes and/or assessments when due, (3) pay utility bills such as heat, electricity, garbage, and other essential services, (4) keep adequate property

EXPIRATION DATE: April 30, 2003

FILING INSTRUCTIONS
Preceding RD Instruction 2024-A

insurance in force, or make scheduled escrow installments for taxes and insurance when required, and (5) prevent deterioration of secured property by immediately addressing and eliminating health and safety violations, drug and criminal activity issues, and deferred maintenance.

Protective advances generally must be due and payable immediately as they are not meant to be an operational advance. Once a default or deficiency is identified and noted, it is the Servicing and State Office responsibility to inform the borrower of the finding and demand that the borrower immediately cure any property default or deficiencies. If the cure does not occur within the timeframe established by the Servicing Office, the borrower may be informed of the Agency's authority to implement a protective advance in order to cure the default or deficiencies, charge the expense as a recoverable cost against the borrower's account, and amortize the advance for repayment for an appropriate length of time. State Offices should solicit the advice and concurrence of the Office of the General Counsel (OGC) serving their region.

Protective advances are a recoverable expense when they are utilized to protect the security interest of the Government, and can be authorized for: (1) payment of real estate taxes and/or assessments, (2) property and flood insurance premiums, (3) maintenance and repairs essential to prevent damage or deterioration of the secured property, when the borrower possesses the title and is not adequately maintaining the property; or when the borrower has abandoned the property, (4) payment of utility bills in order to maintain or restore essential services such as heat, electricity, garbage, water, etc., and (5) eliminate health or safety violations and drug and criminal activity issues such as replace roofs due to leaks, hire security guards to deter drugs and crime, increase perimeter lighting, install fencing, and/or pay outstanding vendor bills for these and other services. It should be further noted that protective advances should only be considered after (1) the servicing office has demanded that the borrower cure the deficiencies within the established timeframe, (2) tax bills are vouched prior to the tax office executing steps to take possession of the property, and (3) when repairs are needed for sufficient structural or health and safety concerns.

Recoverable cost is defined as a cost charged to a borrower's account or incurred prior to the Government's acquisition of title to the property. When federal funds are extended to borrowers, such as through a recoverable cost protective advance, restrictive-use provisions are required to be put in place under the law. For restrictive-use purposes, such funds are treated in the same manner as subsequent loan funds.

Non-recoverable cost is defined as a cost incurred after the Government has acquired the title to the property, and repairs to the property are charged to an inventory account.

The determination of whether a protective advance is recoverable or non-recoverable will depend on who (the borrower or the Agency) had title of the property when the expense was incurred.

The following instructions establish guidelines for executing protective advances and securing recoverable costs.

RD Instruction 2024-A, Exhibit D, Table D-6, pages 1 through 4, provides a listing of the appropriate codes to use when completing Form AD-838, "Purchase Order." It is important that the correct code is used to ensure proper identification of the expense and recoverability. Contracts with commercial sources may be undertaken when the need for such contracting is fully supported and documented. Contracts may not be made however, where discretion is involved for decision-making functions that are inherently governmental.

Program authority to contract for goods and services and make non contractual payments is granted only as specified in RD Instruction 2024-A, Exhibit D, and in accordance with appropriate program regulations such as RD Instructions 1951-K, 1955-A, 1955-B, and 1965-B. The State Director may submit a written request to the Administrator, Rural Housing Service, Attn: Program Support Staff, for authority to contract for purposes not specifically authorized in RD Instruction 2024-A; however, the request must support and document the program needs. (NOTE: Program authority to contract does not allow a Rural Development employee to award a contract). Only a duly authorized Contracting Officer can award a contract. The Administrator may make written restrictions or revocations of any of the program authorities listed in Exhibit D at any time.

Understanding RD Instruction 2024-A. Exhibit D. and the Program Authority Code (PAC): For the purpose of funds controls, tracking expenses, and determining program authority, each type of expense must be identified by a unique PAC. The PAC consists of four consecutive alphanumeric characters, (A-Z and 1-9).

First Character: Identifies the Loan Program affected by the contract/non contractual payment action. Multi-Family Housing Code is M.

Second Character: Identifies the Program Activity (see list below).

Third Character: Identifies the Contract Purpose (for Contract/Non contractual Purpose).

Code	
A	Inspections
B	Appraisals
C	Analysis and Audits
D	Information Services
E	Other Services
F	Maintenance/Management
G	Repairs/Improvements
H	Real Estate Broker (Exclusive Listing)
I	Real Estate Broker (Open Listing)
J	Environmental (Contractual or Non Contractual)
K	Asset Investigation
L-M	Reserved
N	Non contractual Payments
O-X	Reserved
Y	Managerial
Z	Other

Fourth Character: Provides a detail of the general Contract/Non contractual Payment Purpose.

Program Activity Code and Description:

1. Processing - All costs associated with applying for a loan or grant. Costs which would fall under this category include interpreter services and credit reports. This code is used until the loan is actually closed at which time a loan applicant becomes the borrower with an established loan record or account. To determine the recoverability of expenses that fall under this code, review the exhibit.

2. Servicing - All costs associated with normal servicing of a borrower's Loan Costs which fall under this category include protective advances, real estate taxes, insurance, prior and junior liens, authorized selling expenses, utilities, etc. This code in not used when custodial responsibility has shifted to the Agency or the liquidation process has begun. Review the exhibit.

3. Custodial - All costs associated with managing and maintaining the property when the Agency has custodial responsibility due to the borrowers' abandonment of the property. Care of the property would include repairs, construction, supervision, real estate appraisals, year-end reports, hauling, taxes, insurance, utilities, lawn mowing, etc. Repairs to custodial property will be limited to those that are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the State Director.

4. Acquired - All costs associated with voluntary or involuntary liquidation of security property. Costs that fall under this category include repairs, lawn mowing, construction, supervision, real estate appraisals, advertising, foreclosure expense, etc. This code is used when the Agency has accelerated the loan, and should continue to be used until the date of foreclosure, the property is transferred to inventory, or is" sold to a third party (liquidated).

5. Inventory - All costs associated with managing acquired or inventory property. Costs which fall into this category would include real estate inspection, repairs, construction, lawn mowing, real estate broker commission, supervision, title search, auctioneer, real estate taxes, insurance, utilities, etc.

NOTE: The program authority for which Contract Services and Non contractual Payments will be paid depends upon the program code used. Ensure that the correct Contract Purpose Code, the Detail Code, and the Program Activity category code is used to identify/specify the expense.

If you have any questions, please contact the Multi-Family Housing Portfolio Management Division at (202) 720-1600.